

Education Cabinet

Kentucky Board of Education

Department of Education

(New Administrative Regulation)

701 KAR 5:130. Drug Testing of Teachers Involved in Illegal Use of Controlled Substances.

RELATES TO: KRS 160.380, 161.175, 161.790

STATUTORY AUTHORITY: KRS 156.070, 161.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.175 requires the Kentucky Board of Education to promulgate an administrative regulation relating to drug testing as a condition of retaining employment for certified employees determined to have engaged in misconduct involving the illegal use of controlled substances. This administrative regulation establishes criteria and procedures for drug testing of a teacher disciplined and determined to have engaged in misconduct involving the illegal use of controlled substances.

Section 1. Definitions. (1)"Controlled substance" means a substance defined and regulated by KRS Chapter 218A.

(2) "Has been determined in an administrative or judicial proceeding" means discipline for teacher misconduct involving the illegal use of controlled substances for which there was a right to request a hearing under KRS 161.790 and:

(a) For which the teacher did not timely submit notice of intention to answer the charges;

(b) Which was the subject of a notice of intention to answer the charges which the teacher withdrew; or

(c) Which is affirmed or left undisturbed in whole or in part as a result of a final administrative or judicial order, opinion, or judgment.

Section 2. Conditions of Drug Testing. (1) A teacher who has been determined through an administrative or judicial proceeding to have engaged in conduct involving the illegal use of controlled substances shall be subject to random **and** periodic drug testing **at least three (3) times** within a period not to exceed twelve (12) months from the date of the determination. A superintendent shall have the discretion to determine the length of the drug testing period within the maximum time permitted, **except two of the tests shall be within two (2) weeks of each other.**

(2) Testing policies or practices shall provide for:

(a) reliability of test results;

(b) employee privacy during taking of samples;

(c) security of samples; and

(d) protection of confidentiality throughout the testing process and in handling of results.

(3) This administrative regulation shall not preclude or supplant other lawful employee drug testing policies or procedures.

(4) A teacher subject to drug testing under this administrative regulation shall be provided with a copy of board of education policies issued under this administrative regulation and shall be notified the teacher is subject to drug testing as a condition of continued employment.

1 (5) A teacher subject to drug testing who refuses to complete any part of the drug testing
2 process shall be subject to disciplinary action under KRS 161.175 and KRS 161.790.

3 (6) A positive result may be grounds for immediate reassignment of duties or disciplinary
4 action including termination under KRS 161.175 and 161.790.

5 (7) Results of drug testing shall be:

6 (a) confidential;

7 (b) separate from the personnel file; and

8 (c) subject to release to third parties only:

9 1. upon written consent of the individual;

10 2. upon lawfully issued administrative or court order or compulsory process (such as
11 subpoena);

12 3. as needed to address work-related health or safety risks; or

13 4. to be used in administrative or court action.